IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2889 OF 2005

Ambadas Bhujangrao Palkar).. Petitioner

Versus

Shaikh Ahmed Chandsaheb).. Respondent

Ms.Kiran Bhagali with Ms.Lalita Panchakshari for the Petitioner.

Mr.R.S. Apte with Mr.A.A.Garge for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 11TH OCTOBER 2005

P.C.:

. This Petition challenges the order dated 21st February 2005 passed by the Appellate Court whereby the Appellate Court has decreed the Suit filed by the landlord. The Appellate Court has found that the landlord bona fide and reasonably requires the suit premises as he desires to demolisth the premises in order to build a new structure. The landlord had offered the tenant-the Petitioner herein, space in the new construction equivalent to that which the Petitioner was occupying in the old premises. The Appellate Court while decreeing the Suit directed the Plaintiff to comply with the provisions of Section 16 sub-section (6)(d)(iv)(v) of the Maharashtra Rent Control Act.

2. The main bone of contention between the Petitioner and the Respondent landlord is whether the Petitioner is entitled to an additional area in the new construction of a platform outside the shop premises. According to the Petitioner, he was always in occupation of these premises and is, therefore, entitled to the same besides the area mentioned in the tenancy agreement. The area which the tenancy agreement mentions is 240 sq.ft. The Appellate Court has found that there is no evidence on record nor any document in possession of the Petitioner to establish that the platform ‘ota’ abutting the suit premises was always in the possession of the Petitioner. In fact, an admission is recorded by the Appellate Court that the Petitioner was ready and willing to accept the premises of the area mentioned in the agreement dated 10th February 1990 i.e. the tenancy agreement.. In such circumstances, I do not see any reason to interfere with the findings of the Appellate Court.

3. Apart from this, Mr.Apte, learned Advocate for the Respondent, submits that except for the present Petitioner and the Petitioner in Writ Petition No.2890 of 2005, all other tenants have undertaken to vacate the suit premises and, therefore, the Respondent would be demolishing the old structure and building a new one

instead. The Petitioner would be given the same area as is mentioned in the tenancy agreement. He states that the platform which is abutting the suit premises would continue to remain as it is till such time as the Municipal Corporation would demand that it be demolished for the purpose of road widening. Mr.Apte is directed to file an affidavit of the landlord within two weeks from today stating the aforesaid stipulations.

4. Writ Petition rejected.